

1 Kevin D. Smith (State Bar No. 113633)  
2 Demetra L. Edwards (State Bar No. 239498)  
3 Emil A. Macasinag (State Bar No. 256953)  
4 **WOOD, SMITH, HENNING & BERMAN LLP**  
5 10960 Wilshire Blvd., 18<sup>th</sup> Fl.  
6 Los Angeles, CA 90024  
7 Phone: 310-481-7617 ♦ Fax 310-481-7650

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10 Attorneys for Defendant BRIT UW LIMITED (erroneously sued and served as  
11 CERTAIN UNDERWRITERS AT LLOYD'S, LONDON)

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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

12 MICHAEL POPOVSKY; ELAINE  
13 POPOVSKY,

14 Plaintiffs,

15 v.

16 CERTAIN UNDERWRITERS AT  
17 LLOYD'S, LONDON; DOES 1-100,

Defendants.

Case No.

Complaint filed: February 27, 2015

Superior Court Case No.: BC573942

**DEFENDANT BRIT UW  
LIMITED'S NOTICE OF  
REMOVAL TO FEDERAL COURT;  
DECLARATION OF DEMETRA L.  
EDWARDS**

19 **TO THE CLERK FOR THE UNITED STATES DISTRICT COURT FOR  
20 THE CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION,  
21 AND TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

22 **PLEASE TAKE NOTICE** that based on the following allegations,

23 Defendant BRIT UW LIMITED (erroneously sued and served as CERTAIN  
24 UNDERWRITERS AT LLOYD'S, LONDON) hereby removes the above-  
25 referenced action from the Superior Court of the State of California, County of Los  
26 Angeles, to the United States District Court for the Central District of California –  
27 Western Division, pursuant to 28 U.S.C. §§ 1332 and 1441 (based on diversity of  
28 citizenship jurisdiction).

1    **I. TIMELINESS OF REMOVAL**

2        a.     BRIT UW LIMITED (erroneously sued and served as CERTAIN  
 3 UNDERWRITERS AT LLOYD'S, LONDON), a foreign Company, is a Defendant  
 4 in Los Angeles Superior Court Case No., BC 573942, an action commenced by  
 5 Plaintiffs MICHAEL POPOVSKY and ELAINE POPOVSKY, California residents.  
 6 The Complaint in this action was filed on February 27, 2015, and purports to assert  
 7 causes of action for 1) Breach of Contract and 2) Breach of Implied Covenant of  
 8 Good Faith and Fair Dealing.

9        b.     Service of the Complaint provided the first notice to Defendant that  
 10 there is a diversity of citizenship and that Plaintiffs seek damages in excess of  
 11 \$75,000. Defendant received the Complaint on April 6, 2015. Thus, Defendant has  
 12 timely filed this notice of removal, because it is filed within thirty (30) days of  
 13 receipt of the initial pleading setting forth the claim for relief upon which such  
 14 action or proceeding is based, pursuant to 28 U.S.C. § 1446(b).

15       c.     In compliance with 28 U.S.C. § 1446(a), attached hereto are true and  
 16 correct copies of the Summons, Complaint, Notice of Case Assignment, and  
 17 Instructions for Handling Unlimited Civil Cases (collectively **Exhibit 1** to the  
 18 Declaration of Demetra L. Edwards), directed to Defendant, which are the only  
 19 process, pleadings, and orders served upon Defendant in this action.

20    **II. DIVERSITY JURISDICTION**

21       The Complaint, and each alleged cause of action contained therein, may be  
 22 removed on the basis of diversity of citizenship jurisdiction, in that it is a civil action  
 23 where the matter in controversy exceeds the sum of \$75,000, exclusive of costs, and  
 24 the matter is between citizens of different states. 28 U.S.C. § 1332.

25    **III. PLAINTIFF'S CITIZENSHIP**

26       Plaintiffs are citizens of the State of California, within the meaning of 28  
 27 U.S.C. § 1332(a), as they reside and are domiciled at 976 Bel Air Rd., Los Angeles,  
 28 California. (See **Exhibit 1**, The Complaint, page 2, para. 4.)

1     **IV. DEFENDANTS' CITIZENSHIP**

2         Defendant BRIT UW LIMITED (erroneously sued and served as CERTAIN  
 3 UNDERWRITERS AT LLOYD'S, LONDON), or otherwise known as Certain  
 4 Underwriters at Lloyd's of London subscribing to policy no. D13062013003 (the  
 5 policy at issue in the instant case), is now, and was at the time of the filing of this  
 6 action, a citizen of a State other than California within the meaning of 28 U.S.C. §  
 7 1332(c)(1), because it is a business entity, specifically a single insurance syndicate,  
 8 organized under the laws of the United Kingdom, with its principal place of business  
 9 in London, England of the United Kingdom. Specifically, BRIT UW LIMITED was  
 10 the subscribing "member" or "name" of the single insuring syndicate and is not a  
 11 citizen of the State of California.

12         The presence of DOE defendants in this case has no bearing on diversity with  
 13 respect to removal. See, 28 U.S.C. § 1441(b) ("In determining whether a civil  
 14 action is removable on the basis of the jurisdiction under section 1332(a) of this  
 15 title, the citizenship of defendants sued under fictitious names shall be  
 16 disregarded").

17     **V. AMOUNT IN CONTROVERSY**

18         While Defendant denies liability as to Plaintiffs' claims, the amount in  
 19 controversy requirement is satisfied because the Complaint alleges general and  
 20 special damages in an amount exceeding \$250,000. (See **Exhibit 1**, The Complaint,  
 21 page 4, lines: 20-22.)

22     **VI. NOTICE TO STATE COURT**

23         A true and correct copy of this Notice of Removal will be promptly served on  
 24 the Plaintiffs and filed with the Clerk of the Superior Court of the State of  
 25 California, County of Los Angeles, as required by law.

26     **VII. CONCLUSION**

27         Because this action involves citizens of different states, and the amount in  
 28 controversy exceeds \$75,000, the requirements for removal under 28 U.S.C.

1       §§1332(a) and 1441(a) are satisfied and this Court has original jurisdiction.

2           WHEREFORE, Defendant BRIT UW LIMITED prays that the above action  
3 now pending before the Superior Court of the State of California for the County of  
4 Los Angeles be removed to this Court.

5  
6 DATED: May 5, 2015

WOOD, SMITH, HENNING & BERMAN LLP

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9 By: \_\_\_\_\_ /s/ Emil A. Macasinag  
10 KEVIN D. SMITH  
11 DEMETRA L. EDWARDS  
12 EMIL A. MACASINAG  
13 Attorneys for Defendant BRIT UW LIMITED  
14 (erroneously sued and served as CERTAIN  
15 UNDERWRITERS AT LLOYD'S, LONDON)  
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WOOD, SMITH, HENNING & BERMAN LLP  
Attorneys at Law  
501 WEST BROADWAY, SUITE 1200  
SAN DIEGO, CALIFORNIA 92101  
TELEPHONE 619-849-4900 • FAX 619-849-4950

## **DECLARATION OF DEMETRA L. EDWARDS**

I, Demetra L. Edwards, declare as follows:

3       1. I am an attorney at law duly admitted to practice before the courts of  
4 the State of California. I am a partner with WOOD, SMITH, HENNING &  
5 BERMAN LLP, attorneys of record for Defendant BRIT UW LIMITED  
6 (erroneously sued and served as CERTAIN UNDERWRITERS AT LLOYD'S,  
7 LONDON). I know the following facts to be true of my own knowledge, and if  
8 called to testify, I could competently do so.

9       2. This Declaration is made in support of Defendant's Notice of Removal  
10 to Federal Court.

11       3. If called as a witness, I would and could competently testify thereto to  
12 all facts within my personal knowledge except where stated upon information and  
13 belief

14       4. Attached hereto as **Exhibit 1** is a true and correct copy of the  
15 Summons, Complaint, Notice of Case Assignment, and Instructions for Handling  
16 Unlimited Civil Cases filed by Plaintiffs MICHAEL POPOVSKY and ELAINE  
17 POPOVSKY. These are the only process, pleadings, and orders served upon  
18 Defendant in this action to date.

19       5. The Complaint was received on April 6, 2015, as noted on the face of  
20 the Complaint (See **Exhibit 1**.) Thus, Defendant has timely filed this notice of  
21 removal, because it is filed within thirty (30) days of receipt of the initial pleading  
22 setting forth the claim for relief upon which such action or proceeding is based,  
23 pursuant to 28 U.S.C. § 1446(b).

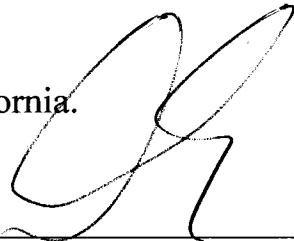
24       6.     The concurrent service of the Summons and Complaint provided the  
25 first notice to Defendant that the case was removable.

26 7. Defendant BRIT UW LIMITED (erroneously sued and served as CERTAIN  
27 UNDERWRITERS AT LLOYD'S, LONDON), or otherwise known as Certain  
28 Underwriters at Lloyd's of London subscribing to policy no. D13062013003 (the

1 policy at issue in the instance case), is now, and was at the time of the filing of this  
2 action, a citizen of a State other than California within the meaning of 28 U.S.C. §  
3 1332(c)(1), because it is a business entity, specifically a single insurance syndicate,  
4 organized under the laws of the United Kingdom, with its principal place of business  
5 in London, England of the United Kingdom. Specifically, BRIT UW LIMITED was  
6 the subscribing "member" or "name" of the single insuring syndicate and is not a  
7 citizen of the State of California.

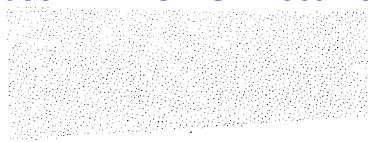
8 I declare under penalty of perjury under the laws of the United States of  
9 America that the foregoing is true and correct.

10 Executed May 5, 2015, at Los Angeles, California.



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12 Demetra L. Edwards  
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**EXHIBIT "1"**



STATE OF CALIFORNIA

Dave Jones, Insurance Commissioner

**DEPARTMENT OF INSURANCE**

300 Capitol Mall, Suite 1700  
Sacramento, CA 95814  
Ron F. Reyna  
Senior Legal Typist  
TBL: 916-492-3291  
FAX: 916-324-1883  
E-Mail: reynar@insurance.ca.gov



April 8, 2015

Certain Underwriters at Lloyd's of London  
One Lime Street  
London, EC 3M 7HA UK

**RE: *Michael Popovsky; Elaine Popovsky vs. Certain Underwriters at Lloyd's London; DOES 1-100*  
(SOP-2013-00005)**

Dear Sir/Madam:

Enclosed please find the Summons and Complaint from Robert Gentino w/Law Office of Robert Gentino filed February, 27<sup>th</sup> 2015, regarding the above referenced matter.

Best regards,

Ron F. Reyna-Senior Legal Typist  
California Department of Insurance  
Legal Division/Government Law Bureau  
300 Capitol Mall, Suite 1700  
Sacramento, CA 95814

Enc.

Rec'd 4/6/15 (1)

#26.00 at 11:03 am

SUM-100

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:** Certain Underwriters at Lloyd's,  
**(AVISO AL DEMANDADO):** London; Does 1-100

**YOU ARE BEING SUED BY PLAINTIFF:** Michael Popovsky;  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):** Elaine Popovsky

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

CONFORMED COPY  
ORIGINAL FILED  
Superior Court Of California  
County Of Los Angeles

FEB 27 2015

Sherri R. Carter, Executive Officer/Clerk  
By: Kristina Vargas, Deputy

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Stanely Mosk Courthouse  
111 N. Hill St.

CASE NUMBER  
(Número del caso)

80573942

Los Angeles, CA 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Sherri Matta 53N 2-15418  
Law Office of Robert Gentino  
3330 Cahuenga Blvd. W #303  
Los Angeles, CA 90068

818-509-7272

Kristina Vargas

DATE:  
(Fecha)

**SHERRI R. CARTER**

Clerk, by \_\_\_\_\_  
(Secretario)

, Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

**NOTICE TO THE PERSON SERVED:** You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): CERTAIN UNDERWRITERS AT LLOYD'S LONDON  
under: CCP 416.10 (corporation) CCP 416.60 (minor)  
CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)  
CCP 416.40 (association or partnership) CCP 416.90 (authorized person)  
 other (specify):
- by personal delivery on (date):

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
NOTICE OF CASE ASSIGNMENT - UNLIMITED CIVIL CASE (NON-CLASS ACTION)**

Case Number DC 573942

**THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT**

Your case is assigned for all purposes to the judicial officer indicated below. There is additional information on the reverse side of this form.

ASSIGNED JUDGE	DEPT	ROOM	ASSIGNED JUDGE	DEPT	ROOM
Hon. Kevin C. Brazile	1	534	Hon. Mitchell L. Beckloff	51	511
Hon. Barbara A. Meiers	12	636	Hon. Susan Bryant-Deason	52	510
Hon. Terry A. Green	14	300	Hon. Steven J. Kleifield	53	513
Hon. Richard Fruin	15	307	Hon. Ernest M. Hiroshige	54	512
Hon. Rita Miller	16	306	Hon. Malcolm H. Mackey	55	515
Hon. Richard E. Rico	17	309	Hon. Michael Johnson	56	514
Hon. Stephanie Bowick	19	311	Hon Rolf M. Treu	58	516
Hon Dalila Corral Lyons	20	310	Hon. Michael L. Stern	62	600
Hon. Robert L. Hess	24	314	Hon. Mark Mooney	68	617
Hon. Yvette M. Palazuelos	28	318	Hon. William F. Fahey	69	621
Hon. Barbara Schepers	30	400	Hon. Suzanne G. Bruguera	71	729
Hon. Samantha Jessner	31	407	Hon. Ruth Ann Kwan	72	731
Hon. Mary H. Strobel	32	406	Hon. Rafael Ongkeko	73	733
Hon. Michael P. Linfield	34	408	Hon. Teresa Sanchez-Gordon	74	735
Hon. Gregory Alarcon	36	410			
Hon. Marc Marmaro	37	413			
Hon. Maureen Duffy-Lewis	38	412			
Hon. Elizabeth Feffer	39	415			
Hon. Michelle R. Rosenblatt	40	414			
Hon. Holly E. Kendig	42	416			
Hon. Mel Red Recana	45	529			
Hon. Frederick C. Shaller	46	500	<b>Hon. Emilie H. Elias</b>	<b>324</b>	<b>CCW</b>
Hon. Debra Katz Weintraub	47	507	<b>*Provisionally Complex Non-Class Action Cases</b>		
Hon. Elizabeth Allen White	48	506	Assignment is Pending Complex Determination	324	CCW
Hon. Deirdre Hill	49	509			
Hon. John L. Segal	50	508			

**\*Complex**

All non-class action cases designated as provisionally complex are forwarded to the Supervising Judge of the Complex Litigation Program located in the Central Civil West Courthouse (600 S. Commonwealth Ave., Los Angeles 90005), for complex/non-complex determination pursuant to Local Rule 3.3(k). This procedure is for the purpose of assessing whether or not the case is complex within the meaning of California Rules of Court, rule 3.400. Depending on the outcome of that assessment, the case may be reassigned to one of the judges of the Complex Litigation Program or reassigned randomly to a court in the Central District.

Given to the Plaintiff/Cross-Complainant/Attorney of Record on

FEB 27 2015 By Kristina Vargas, Deputy Clerk

Page 1 of 2

## **INSTRUCTIONS FOR HANDLING UNLIMITED CIVIL CASES**

The following critical provisions of the Chapter Three Rules, as applicable in the Central District, are summarized for your assistance.

### **APPLICATION**

The Chapter Three Rules were effective January 1, 1994. They apply to all general civil cases.

### **PRIORITY OVER OTHER RULES**

The Chapter Three Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

### **CHALLENGE TO ASSIGNED JUDGE**

A challenge under Code of Civil Procedure section 170.6 must be made within 15 days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

### **TIME STANDARDS**

Cases assigned to the Individual Calendaring Court will be subject to processing under the following time standards:

**COMPLAINTS:** All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days of filing.

**CROSS-COMPLAINTS:** Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

A Status Conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

### **FINAL STATUS CONFERENCE**

The Court will require the parties at a status conference not more than 10 days before the trial to have timely filed and served all motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested jury instructions, and special jury instructions and special jury verdicts. These matters may be heard and resolved at this conference. At least 5 days before this conference, counsel must also have exchanged lists of exhibits and witnesses and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Eight of the Los Angeles Superior Court Rules.

### **SANCTIONS**

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Three Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Three Rules. Such sanctions may be on a party or if appropriate on counsel for the party.

**This is not a complete delineation of the Chapter Three Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is absolutely imperative.**

Rec'd 4/6/15 00  
\$26.00 11:03 am

1 ROBERT GENTINO, SB# 93808  
2 SHERRI MATTI, SB# 275418  
2 ALEXANDRA SAMOFALOVA, SB#295617  
3 LAW OFFICE OF ROBERT GENTINO  
3 3330 Cahuenga Blvd. West #303  
4 Los Angeles, California 90068  
4 818.509.7272

CONFORMED COPY  
ORIGINAL FILED  
Superior Court Of California  
County Of Los Angeles

FEB 27 2015

Sherri R. Carter, Executive Officer/Clerk  
By: Kristina Vargas, Deputy

5 Attorney for Plaintiffs  
6 Michael Popovsky and Elaine Popovsky

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

10  
11 MICHAEL POPOVSKY; ) # BC 573942  
12 ELAINE POPOVSKY )  
13 Plaintiffs ) COMPLAINT  
14 v. ) 1. BREACH OF CONTRACT  
15 CERTAIN UNDERWRITERS AT )  
LLOYD'S, LONDON; DOES 1-100 ) 2. BREACH OF IMPLIED COVENANT  
16 Defendants. ) OF GOOD FAITH AND FAIR DEALING  
17

18 FIRST CAUSE OF ACTION

19 (breach of contract against all Defendants)

- 20 1. Defendant Certain Underwriters at Lloyd's London is, and at all relevant times was, a  
21 foreign insurance company doing business in Los Angeles, California.  
22 2. Doe Defendants 1 through 100 are persons whose true names and capacities are unknown to  
23 Plaintiffs, and are therefore sued by fictitious names. Each of the Doe Defendants are believed to be  
24 in some manner responsible for the transactions and events referenced in this pleading and  
25 proximately caused foreseeable damages to Plaintiffs as alleged.  
26 3. At all relevant times, each defendant was the agent, servant, employee, partner, or joint  
27 venture of the other defendants and acted within the scope of its agency, service, employment,  
28 partnership, or joint venture.

1 4. Plaintiffs Michael Popovsky and Elaine Popovsky ("Popovskys") who own and reside at  
2 976 Bel Air Rd., Los Angeles in their three-story house ("Property").

3 5. From October 2013 to the present, in return for substantial premiums, Defendant, through  
4 agent Roger Wolf, sold Plaintiffs a written homeowners' insurance policy ("Policy") which  
5 provided "all risk" coverage to the Property including, among other things, water damage to the  
6 Property subject only to limited exclusions specifically defined by the Policy.

7 6. Beginning at night in late February 2014, Popovskys woke up to water pouring in through  
8 their bedroom ceiling on their home's second floor. While substantial rain continued for the next  
9 several days, water continued to penetrate the house, through the ceilings, floors and walls of all  
10 three stories causing substantial damage to the entire home, especially the master bedroom which  
11 has been unusable ever since ("February Damage").

12 7. Popovskys immediately notified Defendant of the damage by contacting Mr. Wolf who  
13 advised the Popovskys that Defendants' insurance adjuster would schedule a visit.

14 8. In early March 2014, Defendant's insurance adjuster Mark Murrell, estimator and project  
15 manager Robert Sandler, and a forensic engineer visited the Property to conduct visual inspections  
16 only, without any testing.

17 9. Based on Mr. Sandler's recommendations, Popovskys removed carpet and ceilings in two  
18 bedrooms, and in the master-bedroom's closet and bathroom to mitigate against further  
19 deterioration and development of mold.

20 10. Defendant's insurance adjuster advised the Popovskys that he received the engineer's report  
21 on April 1, 2014 and would issue his report to Defendant the following day.

22 11. Having heard no response and received no further instructions from Defendant or their  
23 agents, on June 23, 2014, almost four months after the February Damage, Popovskys' counsel  
24 Sherri Matta emailed a letter to Defendant's insurance adjusters demanding that Defendant respond  
25 to Popovskys' insurance claim.

26 12. On June 25, 2014, Defendant's adjuster Syngery Adjusting Corporation denied Popovskys'  
27 claim because Defendant "deemed" that water damage to the Property was caused by "the  
28 combined result of surface water runoff and roof drainage" excluded under the policy.

1       13. Popovskys conducted their own independent investigation that included testing of the  
2 drainage systems and determined that the drainage systems worked, as intended, preventing  
3 accumulated surface water from entering the Property; testing also revealed that water entered  
4 through the walls causing penetration consistent with the February Damage in a manner not  
5 excluded by any Policy provision for which coverage applies.

6 14. In January 2015, Ms. Matta again emailed Defendant's adjuster requesting that Defendant  
7 reconsider their denial of coverage and inviting Defendant to conduct their own tests.

8 15. On February 5, 2015, Synergy Adjusting Corporation Popovskys rejected Popovskys' offer  
9 to conduct further testing, reiterating the denial of the Popovskys' insurance claim, but stating that  
10 the Popovskys' letter and requests were forwarded directly to Defendant. Popovskys have received  
11 no further correspondence from Defendant or its agents.

12 16. At all relevant times, Popovskys performed all their obligations under the Policy including  
13 by paying all their premiums and giving Defendant timely notice of the loss.

14 17. By their unreasonable delay in responding to and by denying Popovskys' claim for the  
15 February Damage, Defendant breached the Policy.

16 18. Popovskys have and continue to suffer substantial damages proximately caused by  
17 Defendant's breach including by depriving them of the benefits of insurance proceeds due under the  
18 Policy, preventing the Popovskys from repairing the damage, depriving Popovskys' of use and  
19 benefit of substantial portions of their Property, and generating unpleasant or intolerable living  
20 conditions in the usable portions of the Property since the February Damage.

## **SECOND CAUSE OF ACTION**

(breach of implied covenant of good faith and fair dealing against all Defendants)

24 | 19. Plaintiffs incorporate paragraphs 1-18.

25 20. Based on their relation, Defendants owed Popovskys a duty not to unreasonably withhold  
26 benefits due to them under the Policy.

27 21. Defendants breached their implied duty of good faith and fair dealing by intentionally,  
28 unreasonably, and in bad faith:

- 1       a. Failing to conduct an adequate investigation into the cause of the February Damage;
- 2       b. Dilatory conduct in handling and responding to the claim;
- 3       c. Engaging in Deceptive practices to avoid paying the claim;
- 4       d. Failing to objectively evaluate the claim;
- 5       e. Improperly denying the claim without proper cause; and
- 6       f. Failing and refusing to conduct further investigation after Popovskys presented new
- 7                   evidence indicating that the February Damage was covered by the Policy.

8       22. Popovskys have and continue to suffer substantial damages proximately caused by  
9                   Defendant's breach including by depriving them of the benefits of insurance proceeds due under the  
10          Policy, preventing the Popovskys from repairing the damage, depriving Popovskys' of use and  
11          benefit of substantial portions of their Property, and generating unpleasant or intolerable living  
12          conditions in the usable portions of the Property since the February Damage.

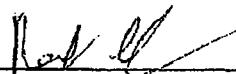
13       23. Defendants' unreasonable and bad faith conduct has been a substantial factor in causing  
14                   Popovskys to suffer substantial mental anguish and emotional distress, incur costs to mitigate  
15                   further Property damage, and attorney fees to compel Defendants' payment of Policy benefits.

16       24. Defendants' fraudulent, oppressive, and malicious acts entitle Plaintiffs to exemplary  
17          damages.

18

19       THUS, Plaintiffs pray for:

- 20       1. General and special damages, including emotional distress, discomfort, and mental anguish  
21                   in an amount exceeding \$250,000.
- 22       2. Attorney fees and costs.
- 23       3. Punitive damages.
- 24       4. Prejudgment interest.
- 25       5. Such other relief as this Court deems just.



26                   Robert Gentino

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## **PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 10960 Wilshire Boulevard, 18th Floor, Los Angeles, CA 90024-3804.

On May 5, 2015, I served the following document(s) described as  
**DEFENDANT BRIT UW LIMITED'S NOTICE OF REMOVAL TO  
FEDERAL COURT; DECLARATION OF DEMETRA L. EDWARDS** on the  
interested parties in this action as follows:

Robert Gentino, Esq.  
Sherri Matta, Esq.  
Alexandra Samofalova, Esq.  
Law Office of Robert Gentino  
3330 Cahuenga Blvd. West #303  
Los Angeles, CA 90068  
Attorneys for Plaintiffs Michael Popovsky and Elaine Popovsky

**BY MAIL:** I placed true copies of the foregoing document(s) enclosed in sealed envelopes addressed as shown on the Service List. I am "readily familiar" with Wood, Smith, Henning & Berman's practice for collecting and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Los Angeles, California, on that same day following ordinary business practices.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on May 5, 2015, at Los Angeles, California.

